



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
CRIMINAL CASE NO 101 OF 2015

REPUBLICPROSECUTOR

VERSUS

PATRICK THURANIRA KIMONYEACCUSED

RULING

1. By a ruling dated 23rd February, 2016 this court dismissed an application by the accused herein to be released on bond pending trial on the ground that most of the intended prosecution witnesses were police officers who had worked with the accused person and therefore there was a real likelihood of the accused making contact with them should the same be released on bond.
2. By an application dated 20th April, 2016 under certificate of urgency, the accused through his new Advocate on record urged the court to review the said ruling and to grant the accused bond on the ground that the accused if released on bond intended to go back to his rural home in Meru District and will therefore not interfere with the prosecution witnesses. It was further stated that the accused suffers from severe persistent upper abdominal pain, hypertension and diabetes which conditions had since deteriorated due to lack of proper medication.
3. The application was supported by an annexed affidavit in which it was deposed that the accused was a police officer attached to anti-mugging unit and in the course of his duties allegedly found himself in a shoot out with suspected thugs and that he will not interfere with any witness if released on bond as he is currently under interdiction and will therefore not go back to his former station of work.
4. It was further deposed that the applicant is a sick man suffering from hypertension, severe persistent upper abdominal pain, diabetes causing blurring vision, severe headache, facial lower limb swelling, peptic ulcer, kidney problems and high blood pressure and that the prison authorities cannot take him for regular clinics in support of which he produced a letter dated 15/1/2016 signed by Hycinth Olaba clinician in charge of Nairobi Remand Prison health centre and one dated 18/1/2016 from Kenyatta National Hospital.
5. When the matter came up for hearing before me, Miss Odembo appeared for the Applicant and submitted that the state had not provided the applicant with the committal bundles and therefore the same did not know any of the intended prosecution witnesses who were likely to be interfered with. It was submitted that the applicant who was under interdiction will not stay in Nairobi but in his rural home in Meru and the court was further urged to look at the two medical reports submitted by the accused.
6. Mr Keno on behalf of the State submitted that there was nothing new which the applicant had submitted to enable the court review its earlier order and that the diseases the accused is allegedly suffering from can be managed in prison. It was further submitted that some of the intended prosecution witnesses are students who are not under protection program.

DETERMINATION

7. I have perused the submissions by all the parties herein and the affidavit in support of the application together with the two medical reports from the Remand prison and Kenyatta National Hospital and is persuaded that if these two reports were placed before the court at the time of the ruling of 23rd February, 2016 the court would not have denied the applicant bond.
8. The applicant who is in law presumed to be innocent at this stage is under Article 28 of the Constitution of Kenya 2010 entitled to inherent dignity and right to have that dignity respected and protected. The Applicant is further under Article 43(1)(a) entitled to the highest attainable standard of health which includes the right to health care services. Taking these fundamental rights into account against the confirmation by the prison authorities that their health facilities cannot afford further treatment to the accused I am satisfied that the same has made up a case for Review of the orders herein denying bond.
9. I therefore allow the application herein dated 18th April, 2016 and Review my order denying the accused bond and grant the same bond pending trial and determination of this case to enable the same obtain specialized treatment while awaiting trial as it is not in the interest of justice for the accused to be condemned to early death as a result of illness which can be managed with proper medication.
10. Having so reviewed my orders aforesaid, the next issue is as to what will constitute reasonable bond conditions? The accused is charged with two counts of murder of two university students whose lives and studies were cut short in circumstances which will only come clear at the full trial herein. On the other hand the accused is aged 42 years old with a young family and in ill health as stated herein.
11. Balancing the rights of the accused person to bond and the rights of the family of the deceased person to protection and safety during the period of trial herein, I hereby order that the accused be released on bond on the following terms:-
 - a. Bond of Kenya Shillings One Million (Kshs.1,000,000/-) with one surety of similar amount.
 - b. In the alternative the cash bail of Kenya shillings Five Hundred Thousand (Kshs.500,000/-) together with surety of similar amount.
 - c. The accused shall immediately upon his release report to Kenyatta National Hospital for treatment and a report thereon submitted to the Deputy Registrar of this court within 14 days from the date of release and the copy of report filed in court.
 - d. The accused shall not visit Central Police Station during the period of his trial and shall immediately upon release report to the Meri County Commandant of Police and shall thereafter report to the same every last Thursday of the month commencing 30th day of June, 2016 and thereafter as set by the said County Commandant .
 - e. The accused person shall make no contact in whatever form with the investigating officer in this matter and with all the intended prosecution witnesses.

DATED, DELIVERED and SIGNED at Nairobi this 7th day of June, 2016.

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J. WAKIAGA

JUDGE

In the presence of:-

Mr. Magoma for the state

Ms Odembo for the accused

Miss Andisi watching brief for the family of the deceased

Accused present

Tabitha court clerk